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266 NLRB No. 90

D--9709
Cincinnati, OH

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RONALD LITSHGI d/b/a
MT. HEALTHY PASTRY SHOP

and

Case 9--CA--18710

BILLY FRANCIS LAIRD, an Individual

DECISION AND ORDER

Upon a charge and an amended charge filed on September 10 and 29, 1982, respectively, by Billy Francis Laird, herein called the Charging Party, and duly served on Ronald Litshgi, a sole proprietor, doing business as Mt. Healthy Pastry Shop, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 9, issued a complaint and notice of hearing on October 13, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (4) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

Respondent failed to file an answer to the complaint or request an extension of time for filing an answer.

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On November 17, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment with exhibits attached. Subsequently, on December 1, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not thereafter file a response to the Notice To Show Cause, and thus the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing issued on October 13, 1982, and duly served on Respondent and the Union, specifically

states that unless an answer to the complaint is filed by Respondent within 10 days of service thereof "all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." Further, according to the uncontroverted allegations of the General Counsel's memorandum in support of the Motion for Summary Judgment, by letter dated November 3, 1982, and attached to the Motion for Summary Judgment, the Regional Director advised Respondent that unless an answer was filed by the close of business November 9, 1982, counsel for the General Counsel would move for summary judgment. No answer was received.

Good cause for failure to answer the complaint has not been shown. Under the rule set forth above, the allegations of the complaint are deemed admitted and are found to be true. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent, a sole proprietorship, has been engaged in the operation of a bakery and pastry shop in Cincinnati, Ohio. During the past 12 months, a representative period, Respondent, in the course and conduct of its business operations, sold and shipped from its Cincinnati, Ohio, facility products, goods, and materials valued in excess of \$50,000 directly to ARA Services, Inc., and Larry's Finer Foods, Inc., retail commercial enterprises located within the State of Ohio, each of which, in

turn, has annual sales in excess of \$500,000 and annually purchases and receives at its Ohio facility goods, products, and materials valued in excess of \$50,000 directly from points outside the State of Ohio.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Charging Party

Billy Francis Laird is an employee within the meaning of Section 2(3) of the Act.

III. The Unfair Labor Practices

On or about July 20, 1982, Laird filed a claim for compensation pursuant to the Ohio Workers' Compensation Act as a result of an illness occurring in connection with his employment by Respondent on or about July 11, 1982. On or about August 30, 1982, Laird advised Respondent, through Ronald Litshqi,¹ that he had been released to return to work by his physician from the injury received on July 11, 1982. On or about August 30, 1982, and at all times thereafter, more particularly on or about September 7 and 11, 1982, Respondent has failed and refused, and

¹ At all times material herein, Ronald Litshqi has been the owner of Respondent and is now, and has been at all times material herein, a supervisor of Respondent within the meaning of Sec. 2(11) of the Act and an agent of Respondent within the meaning of Sec. 2(13) of the Act.

continues to fail and refuse, to reinstate Billy Francis Laird to his former position of employment because he filed a claim for compensation as a result of illness occurring in connection with his employment, or because he filed an unfair labor practice charge in the instant case and gave testimony under the Act.

Accordingly, we find that, by the conduct described in the above paragraph, Respondent has discriminated, and is discriminating, against employees for filing charges or giving testimony under the Act, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (4) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (4) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We shall order Respondent to offer Billy Francis Laird immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position,

without prejudice to his seniority and other rights and privileges, and make him whole for any loss of earnings he may have suffered by payment to him of a sum of money equal to the amount he normally would have earned as wages from the date of his discharge to the date of Respondent's offer of reinstatement, less net interim earnings. Backpay is to be computed in the manner prescribed in F. W. Woolworth Company, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in Florida Steel Corporation, 231 NLRB 651 (1977).²

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Ronald Litshqi d/b/a Mt. Healthy Pastry Shop is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Billy Francis Laird is an employee within the meaning of Section 2(3) of the Act.

3. By failing and refusing, and continuing to fail and refuse, to reinstate Billy Francis Laird because he filed for compensation as a result of illness occurring in connection with his employment or because he filed an unfair labor practice charge or gave testimony under the Act, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, the employee in the exercise of rights guaranteed him in Section 7 of the Act, and thereby has engaged

² See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (4) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Ronald Litshqi d/b/a Mt. Healthy Pastry Shop, Cincinnati, Ohio, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully failing and refusing, and continuing to fail and refuse, to reinstate employees because they file a claim for compensation as a result of illness occurring in connection with their employment, or because they file unfair labor practice charges or give testimony under the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer Billy Francis Laird immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges and make him whole for any loss of earnings and other benefits he may have suffered by

reason of the discrimination practiced against him in the manner set forth in the section herein entitled "'The Remedy.'"

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Expunge from its files any reference to its unlawful failure to reinstate Billy Francis Laird on or after August 30, 1982, and notify him in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel action against him.

(d) Post at his Cincinnati, Ohio, facility copies of the attached notice marked "'Appendix.'"³ Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by him for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

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(e) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C. March 7, 1983

John C. Miller, Chairman

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

I WILL NOT unlawfully fail and refuse, and continue to fail and refuse, to reinstate employees because they file a claim for compensation as a result of illness occurring in connection with their employment, or because they file an unfair labor practice charge or give testimony under the Act.

I WILL NOT in any like or related manner interfere with, restrain, or coerce my employees in the exercise of the rights guaranteed them in Section 7 of the Act.

I WILL offer Billy Francis Laird immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and I WILL make him whole for any loss of earnings or other benefits he may have suffered by reason of the discrimination practiced against him, with interest.

I WILL expunge from my files any reference to the unlawful refusal to reinstate Billy Francis Laird on or after August 30, 1982, and notify him in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel action against him.

RONALD LITSHGI d/b/a
MT. HEALTHY PASTRY SHOP

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Office Building, Room 3003, 550 Main Street, Cincinnati, Ohio 45202, 513--684--3663.